Insta-Print, Inc., t/a IPI Lithography & Graphics *and* Washington Printing, Pressmen, Assistants and Offset Workers Union Local 72, a/w Washington Printing, Pressmen, Assistants and Offset Workers International Union, AFL–CIO. Case 5–CA–31428

October 28, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND MEISBURG

On June 14, 2004, Administrative Law Judge William C. Kocol issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Insta-Print, Inc., T/A IPI Lithography & Graphics, Upper Marlboro, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. October 28, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Stan P. Simpson and *Jennifer R. Simon, Esqs.,* for the General Counsel.

Francis T. Coleman, Esq. (William Mullen), of Washington, D.C., and *James M. Loots, Esq. (Ford & Harrison LLP),* of Washington, D.C., for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Washington, D.C., on March 22–25, 2004. The charge and first amended charge were filed by the Washington Printing, Pressmen, Assistants and Offset Workers Union, Local 72, A/W Washington Printing, Pressmen, Assistants and Offset Workers International Union, AFL–CIO (the Union) on August 27 and October 3, respectively and the complaint was issued on November 28, 2003.[1] The complaint alleges that Insta-Print, Inc. t/a IPI Lithography & Graphics (Respondent) made a number of statements to employees that violated Section 8(a)(1), discharged 18 employees for striking in violation of Section 8(a)(3), granted a pay raise in violation of Section 8(a)(3) and (5), and dealt directly with employees in violation of Section 8(a)(5). The complaint also alleges that a strike that began on August 1 thereafter became an unfair labor practice strike. At the hearing the General Counsel clarified that he was contending the strike converted to an unfair labor practice strike on about August 6. Respondent filed a timely answer that denied that it had violated the Act.

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[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] No exceptions were filed to any of the judge's findings that dismissed complaint allegations. Nor were any exceptions filed to the judge's findings that the Respondent violated the Act as follows: (1) Sec. 8(a)(1) by promising a pay raise and other benefits to employees who did not join the strike, soliciting from an employee the increased benefits she wanted to refrain from joining the strike, telling employees that support for the Union would be futile, telling employees that they would receive a pay increase because they did not join the strike, and coercively interrogating employees about union activity and support; (2) Sec. 8(a)(3) by granting a pay raise to employees because they refrained from joining the strike; and (3) Sec. 8(a)(5) by direct dealing with employees concerning their terms and conditions of employment, and granting a wage increase to employees represented by the Union without first giving the Union notice and an opportunity to bargain about the wage increase.

Chairman Battista finds it unnecessary to pass on whether *Kolka Tables & Finnish-American Saunas*, 335 NLRB 844 (2001), was correctly decided because he finds that, under *Kolkka* or *Kerrigan Iron Works*, 108 NLRB 933 (1954), enf. 219 F.2d 874 (6th Cir. 1955), and its progeny, the Respondent discharged its striking employees.

Similarly, Chairman Battista finds it unnecessary to pass on whether the Respondent violated Sec. 8(a)(1) when Supervisor George Riston told employee Andrew Nelson that the strikers "had been replaced, and they won't be getting their jobs back." This allegation would be cumulative of other violations found, and would not affect the remedy.

[3] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[1] All dates are in 2003 unless otherwise indicated,

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. JURISDICTION

Respondent, a corporation, provides commercial printing services to customers in the Washington, D.C. area at its facility in Upper Marlboro, Maryland, where it annually performs services valued in excess of $50,000 in States other than the State of Maryland. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

As indicated, Respondent provides commercial printing services to customers in the Washington, D.C. area. Gary Blancke is Respondent's owner and president. Gary's wife Wendy Blancke is Respondent's corporate secretary; she also works at the facility doing mostly accounting and bookkeeping work. Respondent admitted that she was an agent for Respondent within the meaning of Section 2(13) of the Act. During times relevant to this case, Donald Wyckoff was plant manager and George Riston was the bindery supervisor. James Atwill is the Union's president and business agent.

On January 23, 2002, the Union was certified as the collective–bargaining representative of the employees in the following unit:

> All full-time and regular part-time production and maintenance employees, employed by the Employer at its Upper Marlboro, Maryland facility, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

After the certification the parties bargained unsuccessfully to reach a contract. The parties met about 12 times before the August 1 strike described below. James Loots, Respondent's counsel, was its chief spokesman. Terrence Heyer, president of the Printing and Graphics Communication Association, also represented Respondent and like Gary Blancke attended every bargaining session between Respondent and the Union. Paul Atwill, Richard Buckey, and Richard Leaman represented the Union. James Agner, an employee of Respondent and the Union's shop steward, also attended some bargaining sessions.

B. Before the Strike

Agner worked for Respondent as a pressman and, as mentioned, he also was the Union's shop steward. In May or June Gary Blancke asked him if he would go around and ask the employees if there was anyway that they could "come to an agreement inside the company that was ratified through the company employees and him that he knew would be—would ratify if it went to a vote through the union." Agner did not follow through with Blancke's request after that conversation. About 3 weeks later Blancke asked Agner if he was going to do what Blancke had earlier asked him to do. Agner said he was, but he was waiting to be sure that Blancke had not changed his mind. Blancke confirmed that he still wanted Agner to follow through.[2] So later that day Agner talked to the employees and asked them what they wanted in the contract. Agner explained to the employees that Blancke asked him to find out from the employees what they wanted so they could get a contract that the employees would ratify. Agner then prepared a list of the employees' wishes and gave the list to Blancke. That list indicated that the employees were willing to keep the same medical insurance, put into effect 3 days of sick leave immediately, a 2-percent annual increase, not biannual, a $1-per-hour increase across the board for hourly employees that was not to be taken away if the employees were already over the contract wage scale, two more holiday/vacation days, and a 3–year contract. After he received the list Blancke wrote his comments next to the items listed such as "ok" and "phase in."[3]

Agner testified that Gary Blancke would tell him that if the employees go on strike they would be fired and he would close the shop. Agner testified that he remembered one such conversation occurring sometime in March after the second strike vote and he did not remember the exact date of the other conversation. Agner testified that Blancke told him that he would rather close the shop than go through the hassle of dealing with "this" and that he could not afford to pay the Union's health and welfare, which was going to cost him an additional $10,000 per month and which would put him out of business. Agner testified that this conversation occurred in "roughly early spring, I mean, late spring 2003."[4] On cross-examination, Agner testified that Blancke generally made such remarks after every strike vote, that there were two or three strike votes, but he did not recall when they were but that "he would imagine" that last one had to be sometime in July. Although I credit the substance of Agner's testimony, he was hopelessly uncertain on dates and I am unable to conclude anything more than these conversations occurred sometime in the early or late spring.[5]

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[2] Donald Wyckoff, who was then plant manager but who later joined the strike on August 1, in general confirms this conversation.

[3] These facts are based on Agner's credible testimony, documentary evidence, and Wyckoff's corroborating testimony. On direct examination, Gary Blancke denied that he asked Agner to prepare the list and instead testified that Agner simply presented the list to him. However on cross-examination Blancke admitted that in April he did ask Agner what he thought it would take to get a contract that the employees would ratify. Blancke explained that this was part of the meeting also attended by Loots and Wyckoff. However, although both Loots and Wyckoff testified at the hearing, neither corroborated Blancke's testimony. Moreover, Blancke testified that when he received the list from Agner he merely filed it away and did not respond. Yet, he was forced to admit later that he did review the list carefully as his markings on the list indicate. I do not credit Blancke's less-than-believable testimony.

[4] The General Counsel explained that there were no allegations in the complaint covering these conversations.

[5] Gary Blancke denied that he ever told anyone that they would be fired for striking. Respondent points to the testimony from other witness as corroboration for Blancke's denial. For example, George "Ricky" Riston, bindery supervisor, testified that he never heard anyone from management tell anyone that they would be fired if they participated in a strike. Shirley Reichle worked mostly in the bindery department. She too testified that she never heard Wendy or Gary Reichle tell anyone that they were or would be fired for striking. Keith

Sometime in July, Wendy Blancke approached Agner and Supervisor Don Wyckoff in front of the presses. Blancke wanted to know the status of negotiations; she said she was in the dark about what was going on. Agner and Wyckoff explained the status of negotiations. Blancke said that if they walk out they are going to be fired.[6]

Donna Byrd worked in the press department. In July Wendy Blancke asked her if she had gone to any union meetings recently and how she felt it was going, apparently referring to the negotiations. Byrd answered that she had and that she really could not discuss it with Blancke. Blancke then asked that if it came to a strike would the employees actually go on strike. Byrd answered yes. Blancke said that Gary Blancke would fire anyone who went on strike and that there would never be a union at Respondent.[7]

David Wolfe worked as production manager and was at all times relevant an admitted agent and supervisor of Respondent. A week or two before the strike Gary Blancke asked Wolfe to go around and see what the employees wanted for benefits. Blancke said that he wanted to do away with the Union coming into the shop. Wolfe refused to do as Blancke asked. A week or so later Gary Blancke talked to Wolfe in the office area. This time Blancke wanted Wolfe to go around and ask the employees who was going to strike. Wolfe again refused.[8]

An important negotiating session was held on July 29. By that time the parties had reached tentative agreement on a number of issues such as sick days, bereavement leave, wages, extra holiday, union security, and dues check off. Among the open issues remaining before the July 29 bargaining session were contract term, assignment of work, annual leave, and holidays. But the parties were not very apart on these issues; the real point of contention was the health and welfare plan. Respondent wanted to retain its existing plan while the Union insisted that Respondent join the Union's plan at approximately twice the cost. Respondent had told the Union that it could not afford that plan and offered to show the Union its books to substantiate that claim, but the Union declined that invitation. Loots conceded that if the parties were able to resolve that issue he felt the other issues could be resolved as well. At the July 29 meeting Edward Toff, International vice president, was present. Agner was also present at this bargaining session. As the parties met, Loots presented a complete contract proposal for the Union's consideration. Then Toff and Loots talked alone outside the meeting rooms in the hallway in an effort to reach agreement of the health and welfare issue. Atwill later joined Toff and Loots in the hallway discussion. Toff suggested that the Union would be willing to phase in the cost of the union health and welfare plan so that Respondent would not have to pay the increased costs at once but could do so over the term of the contract at which time Respondent would switch to the Union's plan. Toff said that the Union was not going to accept any contract that did not include the Union's health and welfare plan. Loots then left the hallway and presented Toff's suggestion to Blancke and Heyer in Heyer's office. Blancke agreed to meet with his accountant to fully examine the suggestion. Loots then went into the meeting room and told Toff and Atwell that Respondent would respond to his suggestion and they tentatively set up the following Thursday or Friday as the next meeting date. Loots also agreed that Respondent would prepare language to resolve the other remaining issues as well. Toff and Atwell returned to the Union's room and told the negotiating team that there was a tentative agreement on the health and welfare issue and the loose ends would be tied up the following Friday

C. The Strike

After meeting with his accountant, Blancke concluded that he could not accept Toff's suggestion. On Friday morning August 1 Loots called Atwill and told him that Respondent could not accept the Union's proposal. According to Loots, Atwill seemed surprised and disappointed. A short time later the employees started to shut down the presses in preparation for the strike. Later that day 18 employees[9] went on strike.[10] As the employees were shutting down the presses to commence the strike, Wendy Blancke shouted asking them what they were doing and who told them they could leave. Agner answered that the Union told them to go on strike. Wendy Blancke[11] said

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Bullock, shipping supervisor, and other witnesses made similar denials. However, none of these witnesses were identified as having been at the scene when the statements were made, so it may be that they did not hear the statements because they were not present when the statements were made. In any event I do not credit Blancke's denial.

[6] These facts are based on Agner's credible testimony. I do not credit Wendy Blancke's denial and conclude that her testimony is generally not reliable. I give two examples of her testimony that I find exaggerated and incredible. In describing why she contacted Agner prior to the strike on the subject of negotiation Wendy Blancke stated "I went to James Agner because I had numerous employees coming up to me inquiring about the Union, *they were scared, they felt intimidated, they did not want to talk to James Agner*, who was the shop steward." There is no credible evidence that anyone felt intimidated during the negotiation process. This type of transparent exaggeration pervades Blancke's testimony and fatality undermines her credibility. In her pretrial affidavit, Wendy Blancke stated that no employee ever talked to her about the possibility of a strike and that she never heard before August 1 of the possibility of a strike. Not only is this statement not credible on its face, but also it conflicts with her testimony at the hearing. Even Donald Frizzell, who works as an estimator out of the office area, testified that he had heard rumors of an impending strike. At the hearing Wendy Blancke testified that even her husband never mentioned the possibility of a strike to her; Gary Blancke did not corroborate this testimony.

[7] These facts are based on Byrd's credible testimony. Wendy Blancke denied asking Byrd about her union activities, but I have concluded that Wendy Blancke is not a credible witness.

[8] These facts are based on Wolfe's credible testimony. They lend credibility to Agner's testimony described above that Blancke asked him to do the same thing.

[9] Those employees are James Agner, Michael Brook, Donna Byrd, Kevin Corkery, Nicholas de Gren, Robert Dodson, Thomas Garner Jr., Larry Green, James Herman, Anthony Hiller, Sherry Hunt, Charles Jackson, Jr., Michael Knowles, Dennis McKenna, Shawn Nelson, David Peck, Gloria Tinsley, and Marc Villiard.

[10] Don Wyckoff, Respondent's plant manager, also joined the strike. Respondent fired him. Dan Wolfe, a supervisor, refused to cross the picket line and he too was fired.

[11] The General Counsel's motion to correct line 12 on page 212 of de Gren's testimony is granted. "Ms." Is substituted for "Mr."

that if they walk out the door they all are fired. Agner replied that they had to go. Wendy Blancke also said that if the employees did not turn in their uniforms by the following Tuesday the costs would be taken out of their final paycheck. Agner and Blancke continued to exchange words and the conversation became loud and heated.[12]

Sherry Hunt worked in the bindery; she did not join the strike on August 1. Around 3 p.m. that day Wendy Blancke stopped the bindery employees while they were working and said that if they went on the strike line they were fired. Hunt joined the strike the following Monday.[13]

After the strike began Wendy Blancke distributed a letter on August 1 to the employees who did not join the strike and on August 4 to the strikers. The letter reviewed the negotiations and then continued:

> Unfortunately, as we have shared with your Union representatives, the fact is that [Respondent] has lost hundreds of thousands of dollars on its operations in the past three years. The Union has refused our repeated offers to let them or their accountants review our books and records. We believe if they did so, they and you would better understand our positions. In July of 2002, Image Graphics signed a contract with [the Union]. In June of this year, they were out of business and their employees out of work. We don't want that to happen to you or to us.
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> We want to keep the doors open and give you a chance to work while we attempt to resolve the remaining issues with your Union. *If you decide not to work, you should be aware that the Company's contribution to your health care will stop effective immediately.* [Italics in original.] In addition, we remind you that your uniforms are Company property; those employees who do not report for work or return their uniforms prior to Tuesday August 5, 2003 will have their final paychecks adjusted accordingly, as you agreed in writing at the time they were issued.
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> We are committed to assuring the safety and security of any employees who wish to continue work during this difficult period, as well as to ensuring that any labor action is managed in a calm and lawful manner by all sides. If any employee has concerns about their ability to safely arrive at work on Monday, please call us over the weekend . . . so we can assist you.

Employees are required to wear uniforms that Respondent supplies to them. Employees are required to sign a form that reads:

> It is mandatory that each employee wear a uniform. Each employee will be issued eleven (11) uniforms. The cost is $5.00 (for production shirt and pants) and $4.50 (for office shirt) per week and will be automatically deducted from your paycheck. You will be responsible for anything other than normal wear and tear.
>
> You will not receive your last paycheck until your uniforms have been returned. In this case if you have direct deposit it will be cancelled unless we have all of your uniforms.

Byrd remained at work on August 1 and went into the facility the following Monday and spoke with Gary Blancke. Blancke told her that he would give anyone who stayed at work a $1–per–hour raise. Byrd said that Blancke would have to give her a lot more than that for her to remain working. Blancke asked what Byrd wanted, and Byrd replied that she wanted a 2–year contract indicating that they could not fire, hire, or lay her off for any reason. Blancke said he felt that was "doable" but that if he went out of business during that time she would lose her job. Byrd said she understood that reservation. Blancke asked what else she wanted, and Byrd said she wanted a $3–per–hour raise. After some discussion Blancke said that was also doable. Blancke then told Byrd to talk with his lawyer to see if this actually could be done but Byrd balked, saying it was for him as the owner of the Company to tell her whether he would do the things she asked for. After some other discussion, Blancke suggested that Byrd take a few days off and think about it. Byrd said that she could not afford to take time off; she then gathered her belongings and joined the strike. Byrd conceded that during that conversation she explained to Blancke that she was joining the strike because she felt she would be betraying her friends and coworkers if she remained at work and that she understood that she was free to remain at work if she wanted to.[14]

[12] These facts are based on Agner's credible testimony as corroborated by several other witnesses. Nicholas de Gren's title was Respondent's warehouse manager, but he was a unit employee. He joined the strike on August 1. He was present in the pressroom as the employees were shutting down the equipment in anticipation of the strike when Wendy Blancke entered. He testified that Wendy Blancke asked why the equipment was not running and that if the employees went on strike they would be fired. Wyckoff too was present in the pressroom and heard Wendy Blancke tell Agner that if they went on strike "they will lose their jobs or be fired or something like that." Harold Landon worked as the second–shift bindery foreman. He testified that on August 1 as the employees were cleaning their presses so they could begin the strike Agner walked past Wendy Blancke. Agner made a taunting remark and Blancke answered that anyone who walked out on strike would not have a job to return to. Wendy Blancke denied that she ever told Agner or anyone else that if they went on strike they would be fired, but I do not credit this denial.

[13] Wendy Blancke denied having "a conversation" with or in the presence of Hunt concerning the Union. She also denied speaking to the bindery employees that day. To the extent that this testimony denies Hunt's testimony, I do not credit it. I conclude that Hunt's testimony is credible. Here is yet another witness whose testimony differs from Wendy Blancke's. Wolfe, who testified that Wendy Blancke told the employees in the bindery that all the employees who had walked out were fired and that anybody who comes in Monday will have a job, corroborated Hunt's testimony. George Riston, then a unit employee who later became the bindery supervisor before the strike, and Shirley Reichle both testified that they never heard any threats that employees who joined the strike would be fired. Based on my observation of the relative demeanor of the witness and the inherent probabilities based on the record as whole, I do credit their testimony.

[14] Gary Blancke testified that Byrd entered the facility and gathered her personal belongings and he followed her to make sure that there was no sabotage or anything. According to Blancke, Byrd said that she did not want to go on strike and that she just bought a house and was going to lose it. Byrd said that she wanted a $2–3–an–hour raise and a contract and then she would stay. Blancke said that he could not do

D. After the Strike

Larry Green worked for Respondent as a second pressman and joined the strike on August 1. The following Tuesday, August 5, Green entered Respondent's facility to return his uniforms. Green was missing a pair of pants and Wendy Blancke told him that he would have to pay for the missing pants. Green told Wendy Blancke that they were hoping that the strike would be over in a few days, but Wendy Blancke replied, "no, you were fired." Green replied that he was not aware he had been fired. Wendy Blancke then called her husband who arrived a few minutes later. Gary Blancke told Green that unfortunately he was fired for joining the strike line. Gary Blancke continued, saying that some of the strikers could come back to work and Green was one of those who could do so. Wendy Blancke also told him that they really would like Green to come back to work and that Green was a good employee. Wendy Blancke said that Respondent would never, never, never be a union shop.[15] At some point Green began crying. Gary Blancke told Green that he should take a week or two and think about whether he wanted to return to work. Green said he was sorry about what was happening and that he had nothing to do with it. Green then returned to the picket line where he told the strikers what had transpired including that he was fired. Green also told the strikers that Respondent was allowing him to return to work if he wanted to but he was not sure whether he would go back to work and that he was going home to think about it. Green thereafter remained on strike.[16]

Wendy Blancke went to the picket line the Tuesday or Wednesday after the strike began and told the employees that they had to return their uniforms and keys to receive their final paycheck. She repeated the same message as new employees appeared on the picket line.

On August 6 Gary Blancke called a meeting of the employees who did not join the strike. He announced that he was giving all employees who did not join the strike, including 12 unit employees, a $1–per–hour raise. Blancke told the employees that the raise was a "thank you" for continuing to work.[17] Blancke asserted at the trial that one of the reasons that he gave the employees the raise was because they took on additional duties during the strike. He also asserted that another reason was because the employees were working additional and odd hours. He pointed out that the employees had not had a raise for a year. Finally, he pointed to the hassle the employees experienced in crossing the picket line. Respondent did not consult with the Union before granting the raise to unit employees nor did it ever propose in bargaining that employees should receive such a wage increase.

Ronald Royal was a former employee of Respondent's at the time the strike began on August 1. He heard about the strike through the rumor mill and went to the facility a few days after the strike began. That same day Antonio Pollard [18] applied for work at Respondent's facility. During his employment interview Gary Blancke told Pollard that the strikers had been fired so Pollard could be assured that he would have a permanent job with Respondent. After the interview Pollard accepted Gary Blancke's offer to have hot dogs that Respondent had prepared for the workers when he encountered Royal, who he already knew. Wendy Blancke then arrived and appeared angry. She asked Royal what he was doing there and asked if Royal was union. Royal answered that he heard about the strike and stopped to see how the guys were doing. Wendy Blancke told Royal to leave and asked Pollard who he was and was he union. Gary Blancke then appeared and explained to Wendy that

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that and Byrd left. He denied that he ever offered to have her talk with his attorney to work out a pay raise and contract. Based on my observation of the relative demeanor of the witnesses and the record as a whole, I conclude that Bryd is a credible witness. As indicated below, 2 days later Blancke offered a $1–per–hour increase to all employees who did not join the strike, so it seems to me likely that he would have offered that to Byrd as well.

[15] In his brief the General Counsel moves to correct the transcript of Green's testimony so that line 8 on page 85 of the transcript would read "Oh, if it became a union shop and he signed a union contract he would be out of business in a month" instead of "Oh, if it became a union shop – a contract – ." I deny the motion to correct the transcript as it is not consistent with my recollection of Green's testimony on this point.

[16] These facts are based on Green's testimony, who I conclude was a credible witness. Respondent argues that Green's testimony is not credible in that on the one hand he testified that he was told he was fired and on the other hand he testified that he was urged to return to work and understood that he could do so. But I conclude that any mixed message given to Green is attributable to Gary and Wendy Blancke and not to Green's lack of credibility. In the same vein Respondent challenges Green's testimony that Wendy Blancke told him that Respondent would never be a union shop. Respondent points out that it already was a union shop and Respondent was bargaining with the Union for a contract. But here again the fact that the statement was inconsistent with reality is attributable to Wendy Blancke and not Green's lack of credibility. Gary Blancke denied that he ever told Green that he was fired. Wendy Blancke likewise denied ever telling Green that he had been fired. Shirley Reichle was present for at least part of this conversation. She did not join the strike. She testified that she saw Larry Green in the facility rubbing his eyes as if he had been crying. She encouraged him to return to work but he declined, saying that the strikers would give him a hard time if he came back to work. She testified that Green never gave any indication that he had been fired, yet admitted that Wendy Blancke approached them and assured Green that he had not been fired and he could return to work at anytime. Reichle testified that Gary Blancke then joined the conversation and he too told Green that nobody had been fired. I have already concluded that Gary and Wendy Blancke generally were not credible witnesses. I credit Reichle's testimony only to the extent that Green began crying during this incident. Otherwise, I was not impressed with her testimony for it appeared contrived. For example, she testified that neither Gary nor Wendy Blancke told Green that he was fired but rather each assured Green that he was not fired. It strikes me as unlikely that the Blanckes would give such assurances unless someone had been concerned that Green or the strikers felt that they had been fired.

[17] This is based on the admission of Gregory Picard who Respondent called as a witness. Gary Blancke was never asked what he told the employees when announcing the raise to them; I infer his testimony in that regard would not have been helpful to Respondent's case. Likewise, Respondent's counsel obtain rote denials from its witnesses Shirley Reichle and Keith Bullock but neither were asked to describe what Blancke actually said to the employees in announcing the raise. I do not credit these denials.

[18] Pollard put the date as sometime in September or October but it is clear that he was at the facility the same day as Royal. I credit Royal's testimony concerning the date of this event.

Royal was a "good guy" and Pollard was applying for work. Pollard left shortly thereafter. After Pollard left Royal and Gary Blancke talked about the strike. Gary Blancke said that the employees were like his family and they did not need a union. According to Royal, Gary Blancke said "that everybody out on the street he's going to replace, they were, you know, being fired."

About a week after the strike began Wendy Blancke again came out to the picket line accompanied by a security guard and announced that she had the final paychecks for the strikers and that it had been nice working with them. When Wendy Blancke gave Byrd her check and Blancke wished her luck.[19]

The strikers originally wore signs indicating that they were on strike against Respondent. However, about a week later the strikers began wearing signs that indicated they were striking to protest unfair labor practices. Atwill explained that they had learned that the strikers had been threatened with termination if they went on strike, had been fired for striking, and the non-strikers had received a pay raise so he called the Union's attorney. The attorney then came to the picket line and met individually with the strikers. He explained to them the unfair labor practices that the Union believed Respondent had committed and they agreed that the strike should protest those matters. During the strike the Union paid the employees strike pay. For some strikers the amount of strike pay exceeded the salary they received from Respondent.

In August Respondent hired Andrew Nelson to work in the bindery. On August 29 Nelson asked his supervisor, George Riston, whether he would still have his job once the strike was over. Riston answered that he would because the strikers have "been replaced, and they won't be getting their jobs back." Nelson was laid off for poor performance on September 2 and he joined the picket line thereafter.[20]

At some point after the strike began Larry Green contacted Respondent and spoke with an office employee. He told that employee that because he was already fired he wanted a letter of termination. Green explained that he needed the letter to get health insurance benefits offered by the District of Columbia. Green later called Wendy Blancke and told her the same thing. Wendy Blancke replied that she would have to talk to her lawyer first; she later told Green that he had to write them a letter of resignation saying that he quit. Green told her that he was not going to do that.

In Respondent's files the strikers were, for the most part, listed as "strike/inactive." Employees who had been terminated are listed, for the most part, as "terminated." At some point after the strike Gary Blancke gave instructions to employees that if anyone inquired about the status of the strikers they were to say that they were on strike On September 2, the Union sent Respondent a letter requesting that the strikers be paid accrued vacation time. Respondent agreed to do so. Respondent's vacation policy states that employees who are terminated will not be paid annual leave. That same day the Union sent a letter requesting certain information including the names of any unit employees who had been fired. Respondent answered that no unit employees had been terminated. Thereafter, Respondent provided the Union with other information that indicated that Respondent was listing the strikers as being inactive and on strike, but not terminated. Still later, on November 11 Respondent sent a letter to the strikers advising them that they had not been terminated and had remained employees throughout the strike; the letter indicated that they were free to return to work if they desired to do so. One striker, Charles Jackson, returned to work after the letter.

III. ANALYSIS

Taking the allegations in the order that they are listed in the complaint, the General Counsel alleges that Respondent independently violated Section 8(a)(1) sometime in June when it "bypassed the Union and dealt directly with its employees by engaging in individual negotiations with employees and by telling employees they could reach their own deal without the Union."[21] The General Counsel also alleges that sometime in July Respondent again bypassed the Union and dealt directly with the Union.[22] The General Counsel also alleges that this conduct violates Section 8(a)(5) and (1).[23] An employer violates Section 8(a)(5) and (1) when it deals directly with employees who are represented by a union concerning the terms and conditions of employment of those employees instead of bargaining with the union as the exclusive bargaining representative. *Allied-Signal, Inc.*, 307 NLRB 752, 753 (1992), and cases cited therein. I have described above how on two occa-

[19] These facts are based on Agner's testimony as well as the testimony of other witnesses. De Gren testified that on Friday Wendy Blancke appeared on the picket line and distributed paychecks and pay stubs to the strikers. As she did so, she said that it was their final paycheck, thank you, it was nice working with you, and good–bye. Landon testified that on that Friday Wendy Blancke handed him a paycheck and said that it was his last paycheck and wished him good luck. William Minniear worked for a security agency and worked at Respondent's facility shortly after the strike began. Called as a witness by Respondent he testified that he accompanied Blancke that Friday as she passed out the paychecks and that Blancke told the strikers that it would be their last paycheck. Wendy Blancke testified that on Friday, August 8 she handed out paychecks to the strikers. When she handed Landon his check Landon mentioned that the Union was threatening to take away his pension and he was very sorry. Wendy Blancke testified that Hunt asked when she would get her next check. Wendy Blancke expressed puzzlement at Hunt's question and replied that this was Hunt's last paycheck because she had not worked any more hours. Hunt, according to Blancke, protested that she did have more money coming. According to Wendy Blancke, she explained to Hunt that it was her final paycheck until she returned to work. Again, I conclude that Wendy Blancke's testimony is contrived and not credible.

[20] These facts are based on Nelson's credible testimony. Riston denied making this statement but based on my observation of the relative demeanor of the witnesses and the record as a whole I do not credit Riston's testimony.

[21] Par. 9(a) of the complaint.

[22] Par. 9(c) of the complaint. In his brief, the General Counsel seeks to withdraw that portion of par. 9 (c) alleging that Respondent acted unlawfully "by telling employees that there would be a better work environment if Respondent could get an agreement between it and the employees rather [sic] the Union." Because there was no evidence to support that portion of the allegation, I grant the General Counsel's request to withdraw it.

[23] Par. 16 of the complaint as amended at the hearing.

sions Gary Blancke asked Agner to talk to the employees to determine what the employees wanted to include in a contract with the Union and that they would support in a ratification vote. Agner talked with employees and created a list of the items that the employees wanted to include, explaining to employees that he was doing this at Blancke's request. Agner gave this list to Blancke who then made notes on the list indicating his reaction to the requested items. This evidence shows that Respondent dealt with Agner, and through Agner the other unit employees, concerning the terms that should be included in the contract. This occurred at the very time Respondent was bargaining with the Union concerning that contract. This conduct clearly had the tendency to undermine the Union as the exclusive bargaining representative. In its brief, Respondent argues that because Agner was the shop steward Respondent was dealing with the Union and not directly with the employees. I reject that contention. Atwill was the chief spokesman for the Union, not Agner. Agner had attended only one or two bargaining sessions and even then only as an observer. Most importantly, Blancke's conduct was clearly designed to undermine the position that the Union had taken at the bargaining table. I conclude that Respondent violated Section 8(a)(5) and (1) by dealing directly with employees concerning their terms and conditions of employment. As indicated above, the General Counsel also contends that Respondent independently violated Section 8(a)(1) "by telling employees that they could reach their own deal without the Union." Because I find no evidence to support this allegation I dismiss it.

Next, the General Counsel alleges that on about June 29 Respondent violated Section 8(a)(1) when Gary Blancke told employees that he would just "close the place down rather than go through all the hassle."[24] There is no evidence that Blancke made any such remarks on or about June 29. There is evidence from Agner, described above, that Blancke made such comments in the early spring or maybe late spring, but the General Counsel stated at the hearing that those remarks were not covered by any complaint allegation and that he was offering the evidence solely to show animus. Under these circumstances, I shall dismiss this allegation of the complaint.

The General Counsel also alleges that during July Gary Blancke threatened employees with discharge if they went on strike.[25] In support of this allegation the General Counsel points to the Agner's testimony that such conversations may have been made in July. But as explained above I did not credited Agner as to the dates of the conversations and concluded only that such conversations occurred sometime in the early or perhaps late spring. It follows that this allegation of the complaint is also dismissed.

Next, the General Counsel alleges that on about August 4 Gary Blancke promised employees a pay increase, and by soliciting employee complaints and grievances, impliedly promised its employees increased benefits and improved terms and conditions of employment, if they ceased engaging in the August 1 strike.[26] I have described more fully above how on August 4 Blancke told Byrd that he would give anyone who stayed at work a $1–per–hour raise. After Byrd rebuffed that offer as inadequate Blancke asked what Byrd wanted, and Byrd replied that she wanted a 2-year contact and a $3–per–hour raise. After some discussion Blancke agreed but asked Byrd to see Blancke's lawyer. An employer violates the Act when it promises employees a pay raise if the employees refrain from participating in a strike. *Royal Typewriter, 2*09 NLRB 1006, 1012 (1974). Here, Blancke initially offered Byrd a $1–per–hour increase and then indicated that a contract and $3-per-hour raise might be "doable" if Byrd did not join the strike. By promising a pay raise and other benefits to an employee if the employee did not join the strike, Respondent violated Section 8(a)(1). Blancke also solicited from Byrd what benefits it would take for her to refrain from joining the strike. Respondent again violated Section 8(a)(1) when it solicited from an employee the increased benefits the employee wanted to refrain from joining the strike. *Butler Shoes New York, Inc.*, 263 NLRB 1031, 1032–1033 (1982).

Next, the General Counsel alleges that on about August 5, 2003, Gary Blancke informed his employees that they were fired for participating in the strike and informed his employees that it would be futile for the Union to continue as their bargaining representative by telling his employees that if Respondent became or continued as a union shop it would be out of business within a month.[27] The General Counsel also alleges that on the same date Wendy Blancke told employees that they were fired and that it would be futile for the Union to continue as their bargaining representative by telling employees that Respondent "would never be a union shop, never, never, never."[28] As it happens, both these allegations cover a single incident and therefore will be dealt with together. I have described above in more detail the incident involving Larry Green and the Blanckes on August 5. During that incident, both Gary and Wendy Blancke told Green that he was fired for joining the strike. These statements are unlawful. *Jackson Hospital Corp.*, 340 NLRB No. 71 (2003). I take into account the fact that the Blanckes also told Green that he could return to work and urged him to do so, and that this may have detracted from the coercive effect of their statements that Green had been fired for striking. But even under these circumstances the coercive nature of the statements remained. By telling an employee that he was fired because he joined the strike Respondent violated Section 8(a)(1). During the same conversation Wendy Blancke emphatically told Green that Respondent would never be a

[24] Par. 9(b) of the complaint.
[25] Par. 9(d) of the complaint.
[26] Par. 9(e) of the complaint.

[27] Par. 9(f) of the complaint. In his brief the General Counsel moved to amend this paragraph to add the italicized language:

On or about August 5, 2003, informed its employees that they were fired for participating in the strike described above in paragraph 8, *and* informed its employees that it would be futile for the Union to continue as their bargaining representative by telling its employees that if it became or continued as a union shop it would be out of business within a month.

Because the new allegation is closely related in time and nature to other allegations in the complaint and because the matter has been fully litigated I grant the motion. *Hi-Tech Cable Corp.*, 318 NLRB 280 (1995), enfd. in relevant part 128 F.3d 271 (5th Cir. 1997).

[28] Par. 10(c) of the complaint.

union shop. Statements made by an employer to employees that their union activities will be made futile violate the Act. *Woodline, Inc.*, 233 NLRB 97 (1977). Taking into account the relevant circumstances in which this statement was made, I note that Respondent had already recognized the Union, was engaged in collective bargaining with it, and had tentatively agreed to the inclusion of a union-security provision in any agreement reached. So obviously Respondent already was a "union" shop. But I also note that the statement was made at a time when negotiations had broken down and when the employees had gone on strike only days earlier. By telling an employee that support for the Union would be futile, Respondent violated Section 8(a)(1). But, I shall dismiss the allegation that Gary Blancke told employees that it would be futile for the Union to continue as their bargaining representative by telling its employees that if Respondent became or continued as a union shop it would be out of business within a month, because that allegation is not supported by record evidence.

The General Counsel then alleges that Respondent unlawfully told employees that they were receiving a pay increase because they refrained from joining the strike.[29] The General Counsel also alleges that Respondent violated Section 8(a)(3)[30] and (5)[31] when it actually granted the wage increase. As set forth above, on August 6 Gary Blancke told employees that they would receive a $1–per–hour raise because they did not join the strike. Making such a statement is unlawful. *Frank Leta Honda*, 321 NLRB 482 (1996). By telling employees that they would receive a pay increase because they did not join the strike, Respondent again violated Section 8(a)(1). It is also unlawful to grant a pay raise to employees for not joining a strike. Id. Here the raise was given in the context where Respondent had repeatedly and unlawfully expressed its hostility towards the strike and the strikers. At the trial, Blancke asserted that one of the reasons that he gave the employees the raise was because they took on additional duties during the strike. He also asserted that another reason was because the employees were working additional and odd hours. He pointed out that the employees had not had a raise for a year. Finally, he pointed to the hassle the employees experienced in crossing the picket line. I note that he did not claim that he told these reasons to the employees. I also note this conclusory testimony was not backed up with any detailed, supportive factual testimony. Under these circumstances I conclude that these assertions were created after the fact and I do not credit Blancke's testimony in that regard. So Respondent's reliance on cases such as *Huck Mfg. Co. v. NLRB*, 693 F.2d 1176, 1184 (5th Cir. 1982), is misplaced. In that case, the court concluded that the employer there had legitimate and substantial business reasons for granting a pay raise to the nonstrikers. I have found no such justification in this case. By granting a pay raise to employees because they did not join a strike, Respondent violated Section 8(a)(3) and (1). Respondent did not consult with the Union before granting the raise to unit employees nor did it ever propose in bargaining that employees should receive such a wage increase. An employer violates Section 8(a)(5) and (1) when it unilaterally changes terms and conditions of employment without first bargaining with the Union. *NLRB v. Katz*, 396 U.S. 736 (1962). Respondent claims it was at impasse in bargaining with the Union and thus was privileged to implement the increase, but I find it unnecessary to resolve that issue. Assuming that was the case Respondent could only implement changes consistent with its last offer to the Union at the bargaining table. *Taft Broadcasting Co.*, 163 NLRB 475 (1967). Here, the evidence is undisputed that the $1–per–hour increase was never offered to the Union during negotiations. By granting a wage increase to employees represented by the Union without first giving the Union notice and an opportunity to bargain about the wage increase Respondent violated Section 8(a)(5) and (1).

The General Counsel also alleges that in July Respondent unlawfully interrogated employees concerning their union activity and threatened employees with discharge if they went on strike.[32] I have described above how in July Wendy Blancke asked Bryd if she had gone to any union meetings recently and how she felt it was going, apparently referring to the negotiations. Byrd answered that she had gone to union meetings and that she really couldn't discuss it with Blancke. Blancke then asked that if it came to a strike would the employees actually go on strike. Byrd answered yes. Wendy Blancke then said that Gary Blancke would fire anyone who went on strike and that there would never be a union. An employer does not automatically violate the Act when it questions an employee about the employee's union activity. Instead, all relevant circumstances must be examined to determine whether the questioning was coercive. *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel Employees, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). On the one hand the questioning occurred at the employees workstation and not in a more formal location. Also Wendy Blancke and Byrd had a cordial relationship and frequently talked to each other about their children and other similar topics. These factors tend to minimize the coercive effect of the questioning. On the other hand an admitted agent of Respondent and the wife of its owner did the questioning. Wendy Blancke persisted with the questioning even after Bryd indicated a reluctance to answer the questions. Byrd had not previously made her union sympathies apparent to Blancke. Most importantly, the questioning was followed immediately by an unlawful threat to discharge employees if they went on strike. In its brief Respondent points out that Wendy Blancke was not a supervisor, but Respondent admits that Wendy Blancke was its agent. That is all that is required to bind Respondent for her conduct. By coercively interrogating an employee about the employee's union activity and support, Respondent violated Section 8(a)(1). By threatening to discharge employees if they go on strike, Respondent also violated Section 8(a)(1). In his brief, the General Counsel contends that another incident is also covered by this allegation of the complaint. He points to the time in July when Wendy Blancke approached Agner in front of the presses. Blancke wanted to know the status of negotiations because she was in the dark about what was going on. Agner and Wyckoff, who was also

[29] Par. 9(g) of the complaint.
[30] Par. 13 (a) and (b) of the complaint.
[31] Par. 13 (c) and (d) of the complaint.
[32] Par. 10(a) of the complaint.

present, explained the status of negotiations. According to Agner, Blancke said that if they walk out they are going to be fired. I apply the *Rossmore House* standard in determining whether the questioning was unlawful. The questioning occurred at the workstation. Agner's support for the Union was open and apparent and he had participated in bargaining. The subject matter of the questioning was relatively innocuous in nature. Of course, the questioning was followed by an unlawful threat, but that alone is insufficient to make the questioning coercive. But I do conclude that Respondent violated Section 8(a)(1) by again threatening to fire employees if they went on strike.

Next, the General Counsel alleges that on August 1 Respondent threatened its employees with discharge, the closing of its business, and loss of insurance benefits if the employees went on strike.[33] Several events happened on August 1 that are covered by this allegation. That day Wendy Blancke told Agner and other employees that if they went on strike they would be fired. That same day Wendy Blancke also told the bindery employees that if they joined the strike they were fired. In its brief Respondent again points out that Wendy Blancke was not a supervisor and thus had no authority to directly fire employees. However, as pointed out previously Respondent admits that Wendy Blancke was its agent. This together with the fact that she was married to Respondent's owner made the threats very real from the employees' perspective. By telling employees that if they joined the strike they would be fired, Respondent again violated Section 8(a)(1). Finally, the General Counsel relies in part on the August 1 letter described above. That letter does refer to the "final paychecks" being adjusted if the strikers failed to return their uniforms, and this may be evidence that Respondent had discharged the strikers, but the letter does not explicitly tie any discharge with protected activity and any implicit connection is too attenuated to rise to the level of a separate 8(a)(1) violation. The General Counsel cites *G. L. Gibbons Trucking Service*, 199 NLRB 590, 596 (1972), in support of its position. In that case the context made clear that the reference to final paychecks was synonymous with termination. Here the context is much more ambiguous. The next contention is that in the letter Respondent threatened to close down its business. The letter does indicate that another employer signed a contract with the Union the previous year and then shut down a year later. But the letter indicated that Respondent did NOT want that to happen to its business. Moreover, in context the letter makes it clear that Respondent was arguing that it could not afford to pay the Union's demands. Under these circumstances I cannot find an unlawful threat to close. Finally, this paragraph of the complaint alleges that Respondent unlawfully threatened employees with loss of their insurance benefits. But all the letter does in that regard is to accurately advise the strikers that that Respondent will no longer pay its share of the strikers' health insurance costs. I perceive nothing unlawful in that statement.

The General Counsel alleges that on August 8 Respondent violated the Act by telling employees that they were fired for striking.[34] The General Counsel does not address this allegation in his brief. It apparently refers to the comments Wendy Blancke made on the picket line as she announced that she had their final paychecks and that it had been nice working with them. As with the August 1 letter, this may be evidence that the strikers were terminated, but it is too attenuated to itself be a violation of the Act. I dismiss this allegation.

As the final 8(a)(1) allegation the General Counsel claims that on about September 2 George Riston, the bindery supervisor told employees that they lost their jobs because joined the strike.[35] As described above, on August 29 Nelson asked Riston whether he would still have his job after the strike was over. Riston answered that he would because the strikers have "been replaced, and they won't be getting their jobs back." Respondent argues that this statement is not unlawful because Respondent may hire replacements. Respondent may indeed hire permanent replacements for employees engaged in an economic strike. However, those replacements are entitled to have their jobs back after the strike as the permanent replacements leave their jobs. *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (9th Cir. 1969), cert. denied 397 U.S. 920 (1970). So when Riston said that the strikers would not be getting their jobs back he was not merely making a correct, lawful statement. Instead, by telling an employee that the strikers lost their job as a result of the strike Respondent violated Section 8(a)(1).

I now turn to the major issue in this case–whether Respondent unlawfully terminated the strikers.[36] It is of course unlawful to terminate employees for engaging in a strike. *Abilities & Goodwill, Inc.*, 241 NLRB 27 (1979). Here Respondent contends that the strikers were never fired. As the Board indicated in *Kolka Tables*, 335 NLRB 844, 846-847 (2001):

> [T]he fact of discharge does not depend on formal words of firing. It is sufficient if the words or actions of the employer "would logically lead a prudent person to believe his [her] tenure has been terminated." . . .
>
> Under this analysis, the determination of whether there was a discharge judged from the perspective of the employees, and is based on whether the employer's statements or conduct "would reasonably lead the employees to believe that they had been discharged." In determining whether or not a striker has been discharged, the events must be viewed through the striker's eyes and not as the employer would have viewed them. Moreover, the employer will be held responsible when its statements or conduct create an uncertain situation for the affected employees: If [the employer's] . . . acts create a climate of ambiguity and confusion which reasonably caused strikers to believe that they had been discharged or, at the very least, that their employment status was questionable because of their strike activity, the burden of the results of that ambiguity must fall on the employer. [citations omitted]

First, I examine the context in which the strike and the alleged discharges occurred. Sometime in the early or late spring Gary Blancke told Agner that if the employees went on strike

[33] Par. 10(b) of the complaint.

[34] Par. 10(d) of the complaint.

[35] Par. 11 of the complaint.

[36] Par. 12 of the complaint.

they would be fired. In July Wendy Blancke told Byrd that Gary Blancke would fire the employees if they went on strike. On August 1, as the employees were in the process of striking Wendy Blancke loudly told the employees that if they walked out the door they were all fired. This alone is compelling evidence that the strikers were terminated. Later that same day, after the strikers left the facility Wendy Blancke told employees who remained at work that they would be fired if they joined the strike. On August 5, both Gary and Wendy Blancke told Green that he was fired for joining the strike. On August 8, as she was passing out paychecks to the strikers, Wendy Blancke told them it was their final paycheck and that it had been nice working with them. This statement confirmed to employees that they in fact had been fired. The General Counsel also argues that the August 1 letter supports a finding that the strikers were fired. The letter does contain a reference to the final paycheck for strikers, but this is connected to the need for the strikers to turn in their uniforms. I conclude that the letter adds little one way or another to the resolution of this issue.

Respondent points out that it was also telling the strikers that they could return to work. This, the argument continues, shows that the employees could not reasonably believe that they had been fired. I disagree. The employees could reasonably believe that if they returned to work quickly they would be allowed to do so but that if they chose to remain on strike they were terminated. In any event, Respondent made statements clearly indicating that the strikers would be and were fired and while it also made other statements indicating that the strikers could return to work, these latter statements are insufficient to dispel the former. Strikers remain terminated even if later an employer later tells them that they may return to work. *Flat Dog Productions*, 331 NLRB 1571 (2000). Respondent here also argues that under *Swardson Painting Co.*, 340 NLRB No. 24 (2003), the strikers should have clarified any ambiguity concerning their employment status by contacting Respondent. However, as the Board majority mentioned in that case, they were not holding that employees had a responsibility to clarify ambiguity by showing up for work. Id. at fn. 7. That is especially the case here where the strikers may not have been ready to abandon the strike and return to work.

Respondent points to statements it made after the strikers were fired, including the series of letters described above in which it told the Union and then the strikers that they had not been fired. But these statements come too late and are inadequate to cure the earlier discharge.[37]

Finally, Respondent argues that its internal records did not indicate that it had fired the strikers. To be sure, that was the case. But as pointed out above, this matter must be viewed through the eyes of the strikers, and there is no evidence that the strikers were aware of the indications Respondent made on those records. By discharging employees because they joined a strike, Respondent violated Section 8(a)(3) and (1).

The final issue that needs resolution is whether the strike converted from an economic one to one that protested unfair labor practices.[38] The General Counsel seeks this as an alternative finding in the event that his allegation that the strikers were terminated is not sustained. I have described above how on about August 8 the Union changed the wording on its picket signs to indicate that the strikers were then protesting Respondent's unfair labor practices. This came after the Union discovered that Respondent had threatened to discharge the strikers for striking, had actually done so, and had granted a wage increase to employees who did not strike. I have concluded above that Respondent committed unfair labor practices in each of those instances. The Board has held that discharging strikers is sufficient to allow a union to convert an economic strike to an unfair labor practice one. *Vulcan-Hart Corp.*, 262 NLRB 167, 168 (1982), enf. denied on other grounds 718 F.2d 269 (8th Cir. 1983). Likewise, an employer's unlawful direct dealing with bargaining unit employees and bypassing a union may also serve to convert a strike. *Safeway Trails*, 233 NLRB 1078, 1082 (1977), enfd. 641 F.2d 930 (D.C. Cir. 1979), cert. denied 444 U.S. 1072 (1980). The Board also examines whether a strike's conversion truly had been caused by a decision of a union and striking employees to protest unfair labor practices. *Mercedes Benz of Orland Park*, 333 NLRB No. 1017 (2001). Here the Union's attorney discussed the unfair labor practices with the strikers before the language on the picket signs was changed. Under these circumstances, I conclude that on August 8 the strike was in part to protest the unfair labor practices that Respondent had committed. *Titan Tire Corp.*, 333 NLRB 1156, 1156–1158 (2001).

CONCLUSIONS OF LAW

1. By the following acts and conduct Respondent violated Section 8(a)(1).

(a) Promising a pay raise and other benefits to an employee if the employee did not join the strike.

(b) Soliciting from an employee the increased benefits the employee wanted to refrain from joining the strike.

(c) Threatening to discharge employees if they go on strike.

(d) Telling employees that the strikers were fired because they joined the strike.

(e) Telling an employee that support for the Union would be futile.

(f) Telling employees that they would receive a pay increase because they did not join
the strike.

(g) Coercively interrogating an employee about the employee's union activity and support.

2. By the following acts and conduct Respondent violated Section 8(a)(3) and (1).

(a) Granting a pay raise to employees because they did not join a strike.

(b) Discharging employees because they joined a strike.

3. By the following acts and conduct Respondent violated Section 8(a)(5) and (1).

(a) Dealing directly with employees concerning their terms and conditions of employment.

[37] I leave for the compliance portion of this case to determine the impact, if any, that the November 11 letter had on Respondent's backpay and reinstatement obligations.

[38] Par. 7(b) of the complaint.

(b) Granting a wage increase to employees represented by the Union without first giving the Union notice and an opportunity to bargain about the wage increase.

Having discriminatorily discharged employees, the Respondent must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Having found that Respondent unlawfully granted a pay raise to certain employees, I shall order Respondent to rescind that pay raise if the Union requests that Respondent do so. Having discriminatorily discharged employees, the Respondent must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., supra plus interest as computed in *New Horizons for the Retarded*, 283 supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[39]

ORDER

The Respondent, Insta-Print, Inc., t/a IPI Lithography & Graphics, Upper Marlboro, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising a pay raise and other benefits to employees if they do not join a strike.

(b) Soliciting from employees the increased benefits the employees want to refrain from joining the strike.

(c) Threatening to discharge employees if they go on strike.

(d) Telling employees that they are fired because they joined a strike.

(e) Telling employees that support for the Union would be futile.

(f) Telling employees that they would receive a pay increase because they did not join the strike.

(g) Coercively interrogating employees about employees' union activity and support.

(h) Granting a pay raise to employees because they did not join a strike.

(i) Discharging employees because they joined a strike.

(j) Granting a wage increase to employees represented by the Union with first giving the Union notice and an opportunity to bargain about the wage increase.

(k) Dealing directly with employees concerning their terms and conditions of employment.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request of the Union, rescind the pay raise that was unlawfully granted to employees.

(b) Within 14 days from the date of the Board's Order, offer James Agner, Michael Brook, Donna Byrd, Kevin Corkery, Nicholas de Gren, Robert Dodson, Thomas Garner, Jr., Larry Green, James Herman, Anthony Hiller, Sherry Hunt, Charles Jackson, Jr., Michael Knowles, Dennis McKenna, Shawn Nelson, David Peck, Gloria Tinsley, and Marc Villiard. full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make James Agner, Michael Brook, Donna Byrd, Kevin Corkery, Nicholas de Gren, Robert Dodson, Thomas Garner, Jr., Larry Green, James Herman, Anthony Hiller, Sherry Hunt, Charles Jackson Jr., Michael Knowles, Dennis McKenna, Shawn Nelson, David Peck, Gloria Tinsley, and Marc Villiard whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Upper Marlboro, Maryland, copies of the attached Notice marked "Appendix."[40] Copies of the Notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since June 30, 2003.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official

[39] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[40] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. June 14, 2004

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promise a pay raise and other benefits to employees if they do not join a strike.

WE WILL NOT solicit from employees the increased benefits the employees want to refrain from joining the strike.

WE WILL NOT threaten to discharge employees if they go on strike.

WE WILL NOT tell employees that they are fired because they joined a strike.

WE WILL NOT tell employees that support for the Washington Printing, Pressmen, Assistants and Offset Workers Union Local 72, A/W Washington Printing, Pressmen, Assistants and Offset Workers International Union, AFL–CIO or any other labor organization would be futile.

WE WILL NOT tell employees that they would receive a pay increase because they did not join the strike.

WE WILL NOT coercively interrogate employees about employees' union activity and support.

WE WILL NOT grant a pay raise to employees because they did not join a strike.

WE WILL NOT discharge employees because they joined a strike.

WE WILL NOT grant a wage increase to employees represented by the Union without first giving the Union notice and an opportunity to bargain about the wage increase.

WE WILL NOT deal directly with employees concerning their terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request by the Union, rescind the pay raise that we unlawfully granted to certain employees.

WE WILL, within 14 days from the date of this Order, offer James Agner, Michael Brook, Donna Byrd, Kevin Corkery, Nicholas de Gren, Robert Dodson, Thomas Garner Jr., Larry Green, James Herman, Anthony Hiller, Sherry Hunt, Charles Jackson Jr., Michael Knowles, Dennis McKenna, Shawn Nelson, David Peck, Gloria Tinsley, and Marc Villiard full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make James Agner, Michael Brook, Donna Byrd, Kevin Corkery, Nicholas de Gren, Robert Dodson, Thomas Garner Jr., Larry Green, James Herman, Anthony Hiller, Sherry Hunt, Charles Jackson Jr., Michael Knowles, Dennis McKenna, Shawn Nelson, David Peck, Gloria Tinsley, and Marc Villiard whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of James Agner, Michael Brook, Donna Byrd, Kevin Corkery, Nicholas de Gren, Robert Dodson, Thomas Garner Jr., Larry Green, James Herman, Anthony Hiller, Sherry Hunt, Charles Jackson Jr., Michael Knowles, Dennis McKenna, Shawn Nelson, David Peck, Gloria Tinsley, and Marc Villiard, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

INSTA–PRINT, INC., T/A IPI LITHOGRAPHY & GRAPHICS